

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

77-1238

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

VS.

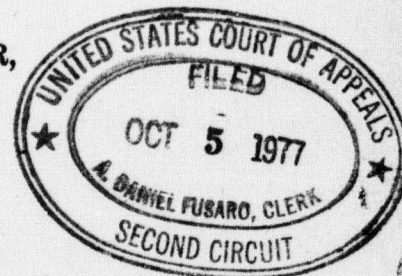
LANI M. BROZYNA,
Defendant-Appellant.

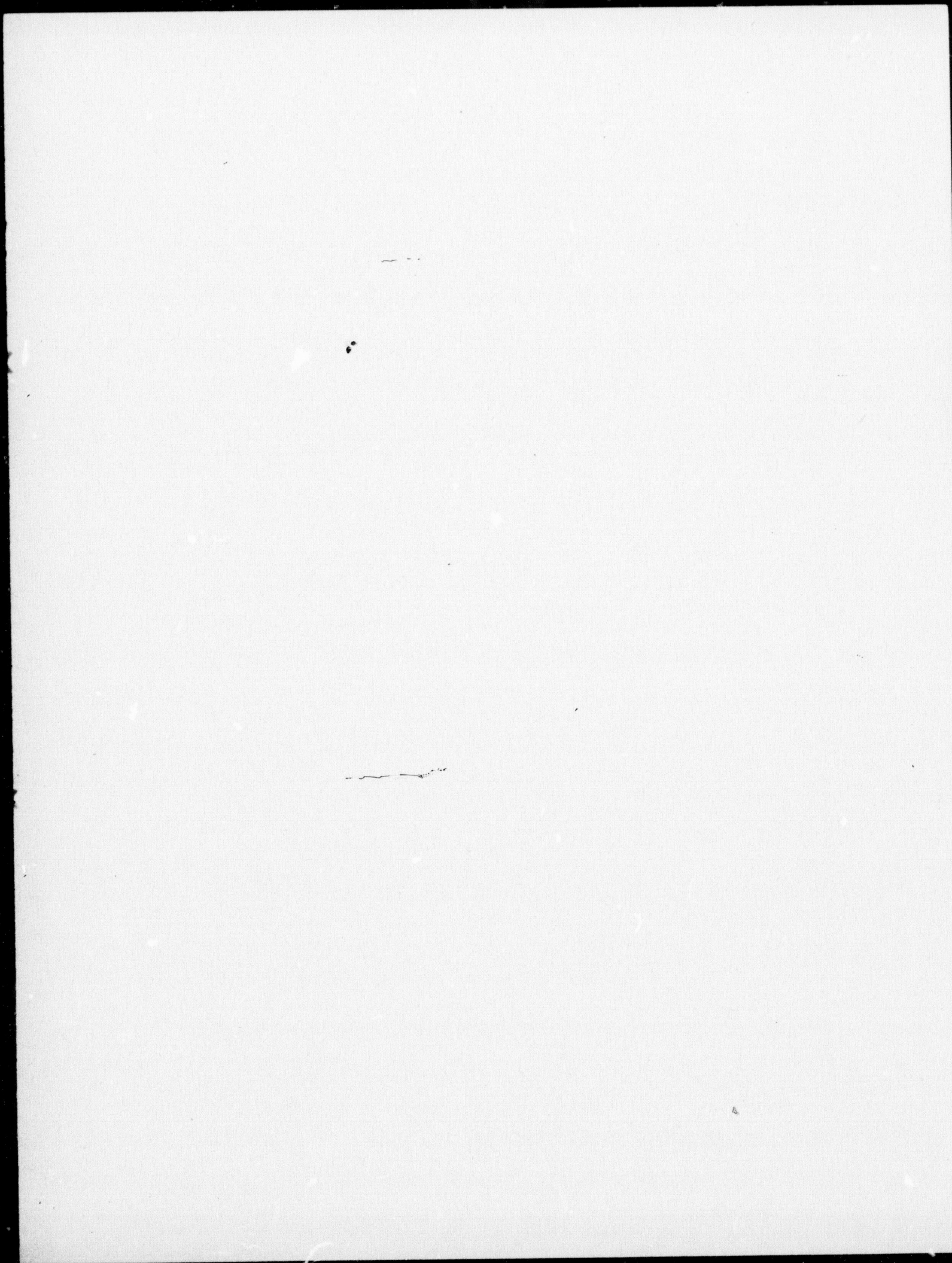
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK.

REPLY BRIEF OF DEFENDANT-APPELLANT

McDONOUGH, BOASBERG, HAMSHER,
HELLER AND RAMM,
Attorneys for Defendant-Appellant,
930 Walbridge Building,
Buffalo, New York 14202.

EDWARD HELLER,
of Counsel.





IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee

-vs-

LANI M. BROZYNA

Defendant-Appellant

REPLY BRIEF

POINT I

THE COURT'S POST-TRIAL ORDER GRANTING ACQUITTAL
WAS CORRECT.

The defendant moved for a dismissal of Count I of the
Indictment on two occasions during the course of the trial. (Supp.
App. 2, 12)

The Government, in response, moved for leave to amend the
Indictment to include the additional defense of "attempted Acquisition".
(Supp. App. 2, 13) The Court reserved decision on the defendant's
motions to dismiss and denied, properly, the Government's motion to
amend the Indictment. (Supp. App. 2, 21)

Viewed in that context, the Court's Post-Trial ruling is
correct either when it is regarded as a verdict of acquittal or when

regarded as a granting of the motion to dismiss the Indictment for failure of proof.

The cases cited in Point I of the Government's argument as an Appellee, are inapposite. It was clear to both sides well before Trial that this case involved an attempted acquisition rather than an acquisition. The Government, however, allowed the matter to proceed to Trial on the Acquisition, rather than presenting the matter to a Grand Jury for Re-Indictment, thus forcing the defendant to stand Trial on a Count which was demonstrably not provable.

CONCLUSION

This Court should not disturb the lower Court's decision respecting Count I of the Indictment.

Respectfully submitted,

McDONOUGH, BOASBERG, HAMSHER,
HELLER AND RAMM
EDWARD HELLER, OF COUNSEL
Attorneys for Defendant-Appellant
Office and P. O. Address
930 Walbridge Building
Buffalo, New York 14202

AFFIDAVIT OF SERVICE BY MAIL

RE: U.S.A.

vs

Lani M. Brozyna

State of New York)
County of Genesee) ss.:
City of Batavia)

I, Leslie R. Johnson being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
Company, Batavia, New York.

On the 3rd day of October, 19 77
I mailed copies of a printed Reply Brief in
the above case, in a sealed, postpaid wrapper, to:

10 copies (by Air Mail) to: A. Daniel Fusaro, Clerk
U.S. Court of Appeals, Second Circuit
New Federal Court House, Foley Square
New York, New York 10007

2 copies to: Edward J. Arcara, U.S. Attorney
Att: Edward C. Wagner, Assistant U.S. Attorney
502 U.S. Courthouse
Buffalo, New York 14202

at the First Class Post Office in Batavia, New
York. The package was mailed Special Delivery at
about 4:00 P.M. on said date at the request of:

McDonough, Boasberg, Hamsher, Heller & Ramm, Att: Edward Heller,
Esq.

930 Walbridge Building, Buffalo, New York 14202

Leslie R. Johnson

Sworn to before me this

3rd day of October, 19 77

Patricia A. Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1977